

In The  
Supreme Court of the United States  
October Term, 1989

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JOHN E. FULLER, Individually and d/b/a  
PARTY TIME PRODUCTIONS,

*Petitioner,*

v.

THE MAYOR AND ALDERMEN OF THE CITY  
OF SAVANNAH, GEORGIA,

*Respondent.*

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF  
CERTIORARI TO THE COURT OF APPEALS OF THE  
STATE OF GEORGIA

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STATEMENT OF THE CASE

Petitioner Fuller, d/b/a Party Time Productions, contracted with the Mayor and Aldermen of the City of Savannah, Georgia (the "City" or "City of Savannah") in June, 1980 to lease the Savannah Civic and Convention Center for a July 4th Peabo Bryson concert. Petitioner was the promoter for the event. Because of inadequate ticket sales and resulting financial difficulties, the performers refused to present a show. Petitioner, individually and doing business as Party Time Productions, sued the City

of Savannah asserting state law claims for breach of contract, unlawful interference with contractual relationships, misrepresentation, false imprisonment, and negligence. He also made claims pursuant to 12 U.S.C. Sections 1982 and 1983. The City asserted a counterclaim for expenses incurred as a result of the lease plus punitive damages and costs.

Prior to trial, summary judgment was granted to the City on the Sections 1982 and 1983 claims and certain of the state law claims. The state law breach of contract claims and the state law counterclaim were tried to a jury in October, 1987. The jury found for Petitioner Fuller in the amount of \$2,135.50 and for the City in the amount of \$2,135.50 plus interest on the counterclaim. Judgment was entered on the verdict by the trial court.

Petitioner then moved for a new trial, but the motion was denied. Petitioner filed a notice of appeal to the Georgia Court of Appeals on March 4, 1988 from the verdict and denial of motion for new trial. No appeal was taken from the summary judgment ruling. On October 14, 1988, the City moved under state law to dismiss the appeal on the ground that the Plaintiff's failure to have a transcript filed was inexcusable and unreasonable. The trial court granted the City's motion to dismiss the appeal on November 18, 1988 pursuant to Georgia law. Petitioner allegedly did not receive the order dismissing his appeal and on January 27, 1989 he moved for an order nunc pro tunc. The trial court re-entered its order dismissing the appeal on February 1, 1989, nunc pro tunc November 17, 1988. Petitioner then appealed to the Georgia Court of Appeals from the nunc pro tunc order, raising only state law issues. The Court of Appeals of the State of Georgia

affirmed the trial court's dismissal of Petitioner's appeal on state law grounds. Petitioner then applied to the Georgia Supreme Court for a Writ of Certiorari on state law enumerations of error but the writ was denied.

Petitioner did not raise a federal question in his motion for new trial to the trial court. (See appendix 10 to Petitioner's application for certiorari). Petitioner did not raise a federal question in his enumerations of error to the Georgia Court of Appeals. (See appendix 15 to Petitioner's application for certiorari). Petitioner did not raise a federal question in his application for certiorari to the Georgia Supreme Court. (See appendix 16 to Petitioner's application for certiorari).

The Georgia Court of Appeals' opinion is reported at 192 Ga. App. 716, 389 S.E.2d 7 (1989).

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### SUMMARY OF THE ARGUMENT

A. The Supreme Court of the United States does not have jurisdiction in this case because no federal question was raised in the State Court to which certiorari is sought.

B. There is no adequate basis for this Court's exercise of its discretion to grant a writ of certiorari.

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## ARGUMENT

**A. The Supreme Court of the United States does not have jurisdiction in this case because no federal question was raised in the State Court to which certiorari is sought.**

No federal questions were raised on the appeal of this case to the Georgia Court of Appeals. The sole federal question raised prior to the present application for certiorari appeared in Plaintiff's complaint in the form of a claim for damages under 12 U.S.C. Section 1982 and 1983. However, those claims were resolved upon the Mayor and Aldermen of the City of Savannah's motion for summary judgment, from which no appeal was taken. As shown in the enumeration of errors from the trial court to the Court of Appeals of the State of Georgia (appendix 15 to Petitioner's application for certiorari to this Court) the only matters raised on appeal were state law claims. Likewise, the only questions raised on the petition for certiorari to the Georgia Supreme Court dealt solely with state law questions.

This Court has held repeatedly that it will not decide federal constitutional issues raised here for the first time on review of State Court decisions. *Cardinale v. Louisiana*, 394 U.S. 437, 89 S. Ct. 1162, 22 L. Ed.2d 398 (1969). *Tacon v. Arizona*, 410 U.S. 351, 93 S. Ct. 998, 35 L. Ed.2d 346 (1973).

As pointed out in *Cardinale v. Louisiana*, federal questions not raised in the State Court system are those on which the record is very likely to be inadequate, since it was not compiled with those questions in mind. "And in a federal system it is important that state courts be given the first opportunity to consider the applicability of state



statutes in light of constitutional challenge, since the statutes may be construed in a way which saves their constitutionality. Or the issue may be blocked by an adequate state ground."

Now, for the first time on appeal, Petitioner raises federal constitutional questions. Petitioner has, however, not preserved those claims and this Court, therefore, has no jurisdiction to hear an appeal. The Petition should be denied.

**B. There is no adequate basis for this Court's exercise of its discretion to grant a writ of certiorari.**

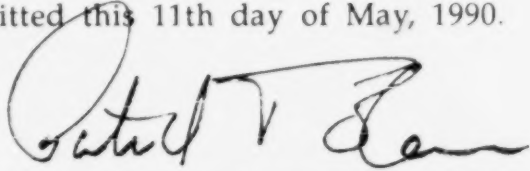
The Petitioner has not raised a sufficient basis for the exercise of this Court's discretion to grant certiorari. Because no federal questions were raised nor reviewed by the Georgia Court of Appeals, none of the reasons for granting a Petition for Certiorari are present in this case. See Rule 10 of the Rules of the Supreme Court of the United States; 28 U.S.C. Section 1257. The petition for writ of certiorari should, therefore, be denied.

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## CONCLUSION

Petitioner's application for a writ of certiorari must be denied because this Court does not have jurisdiction to hear the case. The federal questions sought to be raised in this petition were not raised in the Georgia Court of Appeals. Second, the application for certiorari does not raise any ground upon which this Court should exercise its discretion in granting writ.

Respectfully submitted this 11th day of May, 1990.

A handwritten signature in dark ink, appearing to read "Patrick T. O'Connor", written over a horizontal line.

PATRICK T. O'CONNOR  
*Attorney for Respondent*

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# CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served petitioner in the foregoing matter with a copy of this document by placing a copy of the same in the United States Mail with adequate postage thereon addressed as follows:

John E. Fuller  
1008 West 17th Street  
Jacksonville, FL 32209  
(904) 356-8565

This 11th day of May, 1990.

OLIVER MANER & GRAY

A handwritten signature in cursive script, appearing to read "Patrick T. O'Connor", written over a horizontal line.

PATRICK T. O'CONNOR  
*Attorney for Respondent*

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